

THERESA L. MICHELENA BY HER ATTORNEY-IN-FACT, ARTURO J. SESTINA, PLAINTIFF-APPELLANT, VS. ARIEL W. ISIDRO, DEFENDANT-APPELLEE.

Ponente: VILLON, J.

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VILLON, J.:

Before Us is an ordinary appeal under Rule 41, Sec. 2 (a) of the Rules of Court[1] assailing the order dated May 6, 1999[2] issued by the Regional Trial Court (RTC) of Balanga, Bataan, Branch 4[3] in Civil Case No. 342-ML dismissing appellant's complaint for cancellation of title; as well as the order dated December 16, 1999 which denied her motion for reconsideration.

The antecedents of the case are the following:

On June 9, 1998, appellant filed a complaint[4] against appellee before the RTC for cancellation of title, damages and injunction on the ground that appellee, through fraud, misrepresentation and falsification, succeeded in causing the issuance of Original Certificate of Title (OCT) No. O-2595 covering a parcel of land with an area of 30,002 square meters which allegedly encroached into the property possessed by appellant for the last thirty (30) years in the concept of an owner. Appellant claims that subject property used to be an agricultural land which was awarded by the government to appellee by virtue of Free-Patent No. (III-14)-0003348.

On July 10, 1998, appellee filed a motion to dismiss[5] on the ground a) that appellant has no legal personality to institute the instant action for the cancellation of title (Free Patent) granted by the government over a parcel of public agricultural land; b) that the case should have been instituted by the Solicitor General in the name of the Government because it is in effect an action for reversion and pursuant to Section 101 of the Public Land Act, "all actions for the reversion to the Government of lands of public domain or improvements thereon shall be instituted by the Solicitor General or the Officer acting in his stead, in the the proper courts, in the name of the Commonwealth of the Philippines; c) and that the institution of the instant action in the RTC during the pendency of the administrative proceeding before the Department of Environment and Natural Resources (DENR) involving the same subject matter constitutes forum shopping, thereby warranting the summary dismissal of the action.

On August 18, 1998, appellant filed an opposition to the motion to dismiss stating that she has a legal personality to file the instant case and that no forum shopping was committed in view of the Memorandum[6] of the Office of the Solicitor General (OSG) to the Director of the Lands Management Bureau (LMB) dated October 24, 1994, which states that:

"It has come to the OSG's attention and observation that more and more affected private parties are filing protests/complaints for cancellation of title and/ for cancellation of free patent and reversion before the OSG through your office, the Land Management Bureau (LMB), seemingly using your good office to ventilate their grievances, instead of initiating the appropriate actions for said cancellation themselves.

The OSG can only represent government agencies and entities and not private parties. The rule is that where the land covered by the title in question concerns private land, it should be the affected private party who must

file the appropriate action for either the cancellation of patent and its derivative titles or cancellation of title.

Because of the proliferation of complaints filed by private parties through the LMB, for representation by the OSG, our Office is evaluating the situation for appropriate action and recommendation. In the meantime, we are holding in abeyance the filing of all proposed actions in court specifically as regards the above-enumerated cases.”

On May 6, 1999, the court a quo issued an order granting the motion to dismiss filed by appellee, based on the following ratiocination:

“We find the stand of defendant well taken. In the cases of Ungay Malobago Mine Inc. vs. Intermediate Appellate Court, supra, and Ortigas Company, Limited partnership vs. Ruiz, supra, the Supreme Court had occasion to rule that in an action which is in effect an action for reversion, the same should be instituted by the Solicitor General in the name of the government and not by the plaintiff who does not have personality to do the same. In the instant case, plaintiff seeks the annulment and cancellation of OCT No. 2595 in the name of the defendant covering a parcel of land in Lusung, Mariveles, Bataan which used to be an agricultural land and which was awarded by the government to herein defendant by virtue of free patent number (III-14)-0003348 as according to plaintiff, defendant obtained title thereto by means of fraud, misrepresentation and falsification. This is in effect is an action for reversion. Plaintiff has no legal personality to institute the present action for cancellation of the title and patent issued by the government in favor of herein defendant over a parcel of what used to be a public agricultural land, hence the complaint states no cause of action.

Besides plaintiff filed with the office of the Regional Director of the Department of Environment and Natural Resources a letter-protest dated February 17, 1997, an administrative proceeding which involves the same parties and subject matter which is undoubtedly an instance of forum shopping not tolerated and favored upon in our jurisdiction (Villanueva vs. Adre, 172 SCRA 876)

As to the allegation of plaintiff that she filed this case in accordance with the Memorandum of the Office of the Solicitor General to the Director of Lands Management Bureau dated October 24, 1994 containing circumstances of striking applicability to her case, which states:“x x x . The rule is that where the land covered by the title in question concerns private land, it should be the affected private party who must file the appropriate action for either the cancellation of patent and its derivative titles or cancellation of title,”

suffice it to state that the parcel of land here is one which used to be part of a public agricultural land”.

x x x x x

SO ORDERED.”[7]

Appellant filed a Motion for Reconsideration[8] which was denied by the court a quo in the Order dated December 16, 1999.[9]

Appellant is now before this court alleging that the court a quo erred in ordering the dismissal of the complaint.

We rule in favor of the appellee.

In an action for nullification of title or declaration of its nullity, the complaint must contain the following allegations: 1) that the contested land was privately owned by the plaintiff prior to the issuance of the assailed certificate of title to the defendant; and 2) that the defendant perpetuated a fraud or committed a mistake in obtaining a document of title over the parcel of land claimed by the plaintiff.[10]

In the case at bar, nowhere in the complaint did appellant allege that she had previously held title to the land in question. On the contrary, she acknowledged that the disputed land was public land as in fact she first filed a protest before the Office of the DENR, and that it had never been privately titled in his name. The Supreme Court

has ruled that a complaint by a private party who alleges that a homestead patent was obtained by fraudulent means, and who consequently prays for its annulment, does not state a cause of action; hence, such complaint must be dismissed.[11]

Appellant, whose case is one for reversion, cannot be treated as party in interest pursuant to Section 101 of the Public Land Act which categorically declares that only the Solicitor General or the officer in his stead may institute such an action.[12] A private person may not bring an action for reversion or any other action that would have the effect of canceling a free patent and its derivative title, with the result that the land thereby covered would again form part of the public domain.[13] Section 2 of Rule 3 of the Rules of Court[14] ordains that every action must be prosecuted or defended in the name of the real party in interest, who stands to be benefited or injured by the judgment in the suit. Indeed, one who has no right or interest to protect has no cause of action by which to invoke, as a party-plaintiff, the jurisdiction of the court.[15] In the case at bar, the court a quo correctly held that appellant had no legal personality to institute a case for cancellation of the title and patent issued by the government in favor of appellee over a parcel of what used to be a public agricultural land. Hence, the complaint states no cause of action.

Appellant contends that she filed this case in accordance with the memorandum of the OSG to the Director of LMB dated October 24, 1994. However, said memorandum precisely states that, “the rule is that where the land covered by the title in question concerns private land, it should be the affected private party who must file the appropriate action for either the cancellation of patent and its derivative titles or cancellation of title.” And since subject property used to be part of a public agricultural land and not private land, only the Solicitor General or the officer in his stead could file a proper case for reversion against the holder of the free patent.

Finally, appellant is guilty of forum shopping considering that by virtue of a letter-protest dated February 17, 1997 which she filed with the Office of the Regional Director of the DENR, Region III, an administrative proceeding is still pending before the said administrative body for the cancellation of Free Patent issued in favor of appellee. Thus, in the case at bar, all the elements for forum shopping to exist are present, i.e. “(a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration”.[16]

The Supreme Court has repeatedly held that there is forum-shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another. The principle applies not only with respect to suits filed in the courts but also in connection with litigations commenced in the courts while an administrative proceeding is pending, as in this case, in order to defeat administrative processes and in anticipation of an unfavorable administrative ruling and a favorable court ruling.[17]

WHEREFORE, in view of the foregoing, the instant appeal is DENIED for lack of merit. The assailed orders are hereby AFFIRMED IN TOTO.

SO ORDERED.

Asuncion, (Chairman) and Mendoza, JJ., concur.

[1] Sec. 2. (a) Ordinary Appeal. – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. xxx.

- [2] Records, pp. 59-61
- [3] Penned by Hon. Erlinda Casaus-Diccion, Presiding Judge.
- [4] Records, pp. 1-9
- [5] Ibid, pp. 41-46
- [6] Records, pp. 51-53
- [7] *ibid*, p. 61
- [8] *ibid*, pp. 62-65
- [9] *ibid*, p. 68
- [10] *Heirs of Kionisola vs. Heirs of Dacut*, 378 SCRA 206
- [11] *Spouses Tankiko vs. Cezar*, 302 SCRA 559, citing *Lucas vs. Durian*, 102 Phil. 1157
- [12] *Heirs of Kionisola vs. Heirs of Dacut*, *supra* ; *Spouses Tankiko vs. Cezar*, *ibid*,; *Peltan Development Inc. vs. Court of Appeals*, 270 SCRA 82
- [13] *Sumail vs. Judge of the Court of First Instance*, 96 Phil. 946
- [14] Section 2. Parties in interest. - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.
- [15] *Borlongan vs. Madrideo*, 323 SCRA 248
- [16] *Government Service Insurance System vs. Bengson Commercial Buildings, Inc.*, 375 SCRA 431
- [17] *Villanueva vs. Adre*, 172 SCRA 876; *Silahis International Hotel, Inc. vs. NLRC*, 225 SCRA 94 and *First Philippine International Bank vs. Court of Appeals*, 252 SCRA 259

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